

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LORING ROCKE and MICHAEL CINO,)	
)	
Plaintiffs,)	
)	Case No.: 08 CV 3828
v.)	
)	Honorable Ronald A. Guzman
T-MOBILE USA, INC. and YOUNG AMERICA)	
CORPORATION,)	Magistrate Judge Martin C. Ashman
)	
Defendants.)	
)	

T-MOBILE USA, INC.’S MOTION TO DISMISS AND TO STRIKE

T-Mobile USA, Inc. (“T-Mobile”), by its undersigned counsel, and pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), 12(f) and 23, hereby moves to dismiss the putative class action Complaint in this case on the following grounds:

1. The Complaint itself reveals that the claims of the Named Plaintiffs are time-barred, defeating their individual claims with prejudice and undermining their status to sue on behalf of a class;
2. The Named Plaintiffs fail to allege the prerequisites of a fraud claim at all, let alone with the specificity required by Federal Rule of Civil Procedure 9(b), independently undermining their standing to sue on behalf of a class;
3. The Complaint relies upon its class allegations to invoke this Court’s jurisdiction, consistent with the Class Action Fairness Act, 28 U.S.C. § 1332(d); however, the putative class definition fails on its face as a matter of law, relying on an improper “fail-safe” class and supporting striking the Complaint’s class allegations, requiring dismissal of the Complaint on jurisdictional grounds; and

4. Much of the Complaint concerns the adequacy of pre-paid credit cards as substitutes for rebate checks; however, these allegations have nothing to do with either the Named Plaintiffs, who do not claim to have received these cards (and in fact allege they did not receive any rebates) or with the class, as defined.

The bases for this motion are more fully set forth in the accompanying Memorandum in Support.

WHEREFORE, T-Mobile USA, Inc. moves that the Court grant this motion to dismiss, ordering:

- A. That the Named Plaintiffs' claims be dismissed, with prejudice;
 - B. That the Complaint otherwise be dismissed;
 - C. Alternatively, that the immaterial allegations of the Complaint be stricken;
- and
- D. Such further relief as the Court deems just and proper.

Respectfully submitted,

T-MOBILE USA, INC.

By: s/ Robert M. Andalman
One of its attorneys

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CERTIFICATE OF SERVICE

I, Robert M. Andalman, hereby certify that on September 3, 2008 I caused to be electronically filed the foregoing **T-Mobile USA, Inc.'s Motion To Dismiss And Motion To Strike**, which will be served electronically on all registered parties of record.

In addition, I served the following non-registered party by U.S. mail, proper postage prepaid:

Robert J. Kelter
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/s/ Robert M. Andalman